IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

WP(C).No. 27407 of 2007(K)

AGAINST THE ORDER IN FDIA 1844/2006 IN
OS.333/2003 of III ADDL.SUB COURT, KOZHIKODE

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PETITIONERS:

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1. RAHMATH P.K., W/O. ABDUL KAREEM,
   AGED 46 YEARS, HOUSEWIFE, ELAMARAM HOUSE,
   NELLIKODE AMSOM, KOVOOR DESOM, KOZHIKODE TALUK,
   KOZHIKODE DISTRICT, KERALA STATE.

2. V. KUNHEEBI, W/O. POCKER,
   AGED 67 YEARS, HOUSEWIFE, PEEDIKAKANDI HOUSE,
   KOVOOR DESOM, POST MEDICAL COLLEGE, KOZHIKODE
   TALUK, KOZHIKODE DISTRICT, KERALA STATE.

3. V. RASIYA, W/O. MUHAMMED KHASIM,
   AGED 52 YEARS, HOUSEWIFE, 'GULSHAN', 30/402,
   NELLIKODE AMSOM, CHEVAYOOR DESOM,KOZHIKODE TALUK,
   KOZHIKODE DISTRICT, KERALA STATE.

4. FATHIMA P.K., W/O.ABDURAHIMAN,
   AGED 50 YEARS, HOUSEWIFE, PEEDIKAKANDI HOUSE,
   NELLIKODE AMSOM, KOVOOR DESOM, POST CHEVAYOOR,
   KOZHIKODE TALUK, KOZHIKODE DISTRICT, KERALA STATE.

5. NOUFIRA P.K., W/O. ABDUL NAZEER,
   AGED 37 YEARS, HOUSEWIFE, 'GULSHAN', 30/402,
   NELLIKODE AMSOM, CHEVAYOOR DESOM,KOZHIKODE TALUK,
   KOZHIKODE DISTRICT, KERALA STATE.

BY ADV. SRI.B.KRISHNAN
SRI.R.PARTHASARATHY

RESPONDENTS:
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1. AMINA P.K., W/O. KUNHIBAVA,
   AGED 48 YEARS, HOUSEWIFE,'ROSHINI',NELLIKODE AMSOM
   KOVOOR DESOM, KOZHIKODE TALUK, KOZHIKODE DISTRICT,
   KERALA STATE.

2. V. MUHAMMED IQBAL, S/O.V.POCKER,
   AGED 41 YEARS, PEEDIKAKANDI HOUSE,NELLIKODE AMSOM,
   KOVOOR DESOM, POST MEDICAL COLLEGE,KOZHIKODE TALUK
   KOZHIKODE DISTRICT, KERALA STATE.

3. HAJIRA P.K., W/O.D.V.MUHAMMED RAFI,
   AGED 39 YEARS, HOUSEWIFE,'FAS' NEAR POPULAR
   AUTOMOBILE BUILDING, MALAPARAMBU AMSOM, DESOM,
   KOZHIKODE TALUK, KOZHIKODE DISTRICT,KERALA STATE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.27407 of 2007

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Dated this the 14th day of September, 2007.

JUDGMENT

This Writ Petition is filed seeking a direction to the Subordinate Judge, Kozhikode to dispose of the final decree proceedings, that is, I.A.No.1844 of 2006 in O.S.No.333 of 2003. A preliminary decree for partition has been passed and I am informed that a petition is filed by one of the sharers for appointment of a receiver, who is having 7 out of 64 shares. The court below had appointed a Commissioner, but directed the Commissioner to inspect the property only on receipt of further orders from the court. The said order was passed on 22.3.2007.

2. The appointment of a receiver and passing of final decree are independent proceedings and what is to be done in a final decree is to appoint a Commissioner to inspect the property and divide the property by metes and bounds taking into convenience of the parties, get a report and pass a final decree after hearing

all the parties. So far as the application for appointment of receiver is concerned, it is done when it is just convenient under Order 40 of Code of Civil Procedure and when there is scramble for possession. The preliminary decree would have provided for mesne profits from the person, who is in possession of the property and it has also to be taken into consideration while appointing a receiver during the pendency of the proceedings.

3. Whatever it may be, the court cannot unnecessarily postpone the inspection of the property by the Commissioner and therefore I direct the learned Subordinate Judge, Kozhikode to proceed further in I.A.No.1844 of 2006 by issuing necessary orders and try to dispose of the matter as expeditiously as possible.

Writ Petition is disposed of as above.

M.N.Krishnan,
Judge.

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